

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17342 of 1997

Date: 14.08.2007

Between:

Mohd. Faqrudin

... Petitioner

AND

A.P. State Wakf Board, rep., by its
Chief Executive Officer,
Opp. Public Gardens, Nampally,
Hyderabad and another.

... Respondents

Counsel for the petitioner : Sri Mirza Safiullah Baig

Counsel for the respondents: Sri M.A.Rafi
Standing Counsel for
the Wakf Board

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.17342 of 1997

ORDER:-

Feeling aggrieved by the order dated 30.04.1997 passed by respondent No.1 whereby the petitioner's services as Attender (Chowkidar) were terminated with effect from 29.04.1997, the present writ petition is filed.

The petitioner was appointed as Chowkidar temporarily by the In-charge Secretary of respondent No.1 vide his proceedings No.E1/100/89 dated 30.03.1989. The said order of appointment shows that the petitioner was posted at Bandiwala Compound Complex at Chiragali lane, Hyderabad in the pay scale of Rs.740-15-950-20-1150. It is however stated in the said order that the petitioner will be paid consolidated pay (minimum of scale plus D.A. admissible from time to time).

By the impugned proceedings respondent No.2 terminated the petitioner's services. A reading of the said proceedings shows that the petitioner beat Sri Syed Mansoor, Attender (Outward Section) of Andhra Pradesh State Wakf Board (for short "the Board") on 29.04.1997 between 2-30 and 3-00 p.m. and misbehaved with him unnecessarily in the presence of other attenders and staff members and that the Chairman of the Board

has passed orders to terminate the services of the petitioner with effect from 29.04.1997 A.N. Following the said purported termination order passed by respondent No.2, the impugned proceedings were issued. Questioning the said proceedings, the present writ petition is filed.

The respondents have not filed any counter-affidavit.

Heard Sri Mirza Safiullah Baig for the petitioner and Sri M.A.Rafi, learned Standing Counsel for the respondents.

Learned counsel for the petitioner submitted that the impugned order of termination is in flagrant violation of principles of natural justice, inasmuch as, the respondents neither conducted an enquiry nor given any opportunity whatsoever to the petitioner before terminating his services. He therefore submitted that the order impugned in this writ petition is liable to be set aside on this short ground alone.

Opposing the contentions of the learned counsel for the petitioner, the learned Standing Counsel for the respondents submitted that since the petitioner is only a temporary employee, there is no requirement of holding an enquiry. He further submitted that as the petitioner had beaten up a co-employee in the presence of many other attenders and staff members, his services were terminated. Learned counsel further submitted that as the petitioner indulged in grave misconduct, the respondents rightly terminated his services and that this Court, exercising its discretionary jurisdiction, may not interfere with the order of

termination passed by the respondents.

I have carefully considered the respective submissions of the learned counsel.

Learned counsel for the petitioner relied upon the judgment of the Supreme Court in **Nar Singh Pal vs Union of India and others**^[1] in support of his contention that though the petitioner was appointed on temporary basis, still he is entitled to protection under Article 311 (2) of the Constitution of India. In the said case, the Supreme Court has dealt with a more or less similar situation where the appellant (for convenience “the employee”) therein was engaged as a casual labour by the telecom department and having worked for more than 10 years, he acquired temporary status. A criminal case was registered against him for the offences under Sections 324, 427 and 504 IPC on the charge that he had beaten with iron article and bitten with teeth one Sri Mahender Singh, Gateman on 20.04.1992. On 27.02.1998, the employee was acquitted by the criminal court. During the pendency of the criminal case, the services of the employee were terminated on 20.05.1992 on the same allegation, which was the subject matter of the criminal case. As the employee’s request for reinstatement was not acceded to, he unsuccessfully invoked the jurisdiction of the Central Administrative Tribunal, Principal Bench of New Delhi and aggrieved by the order of the Tribunal, the employee filed writ petition in the Delhi High Court, which dismissed the same on 30.10.1998. The employee finally filed appeal with special leave in the Supreme Court. While dealing with the case, the Supreme

Court held as under:

“The appellant, no doubt, was a casual labour but as observed by the Tribunal, he had acquired temporary status with effect from 1-10-1989. Once an employee attains the 'temporary' status, he becomes entitled to certain benefits one of which is that he becomes entitled to the constitutional protection envisaged by Article 311 of the Constitution and other articles dealing with services under the Union of India. A perusal of the impugned order by which the services of the appellant were terminated indicates that since the appellant had beaten one Mahender Singh with an iron rod and had also bitten him with teeth on 20-4-1992 at 8.00 p.m. While the said Mahender Singh was on duty as Gateman, Tax Bhawan, Agra, therefore, his services were terminated with immediate effect. Thus the services were terminated on account of the allegation of assault made against the appellant. This Court on 24-1-2000 passed the following order:-

"Learned counsel appearing for the respondents is granted six weeks' time to seek instructions whether regular departmental proceedings were taken in this matter or not."

When the case was next taken up, the entire papers relating to the inquiry were placed before us by the counsel for the respondents which indicate that a regular departmental enquiry was not held and only a preliminary enquiry was held against the appellant on the basis of which his services were terminated. The letter dated 21.4.1992, from Assistant Engineer, Trunks, TMX Tax Bhawan, Agra-3, to Shri Shital Din, Divisional Engineer, Phones (Planning and Administration) Agra, recites, inter alia, as under:-

"Shri Nar Singh Pal, Ty. Mazdoor of this unit

assaulted on Shri Mahendra Singh, Gateman who was on duty at main gate of Tax Bhawan, Agra and was performing 1400 to 2200 hours duty on 20-4-1992. This mishappening occurred at 2000 hours on 20-4-1992. At the time of incident, I was in Trunk Exchange, Agra, when Shri Mahendra Singh, Gateman approached the undersigned in injured condition for help. I rushed to the gate of Tax Bhawan for spot verification and making detailed enquiry of the case. I found that the culprit Shri Nar Singh Pal was abusing Shri Mahendra Singh, Gateman. Shri Nar Singh Pal, Ty. Mazdoor not only assaulted Shri Mahendra Singh, Gateman but he also threatened to kill me when I was making spot inquiry. As per my observation Shri Nar Singh Pal, Ty. Mazdoor was under drunk condition. I immediately informed to you thereafter S.O. Rakabga Police Station on phone regarding this incidence”.

The letter further recites as under:-

"I shall be grateful if you may kindly take suitable action against Shri Nar Singh Pal, Ty. Mazdoor who has created hindrance in government work, damages of the government property and created the terror and horror amongst the staff due to his gunda activities and has threatened the undersigned. "

The documents which have been placed before us pertain to the preliminary inquiry made against the appellant in which the statement of certain persons who had seen the incident was recorded. The services of the appellant were, thereafter, terminated by paying him the retrenchment compensation through a cheque along with the order dated 20-5-1992. The order having been passed on the basis of preliminary enquiry and not on the basis of a regular departmental enquiry without issuing a charge-sheet or giving an opportunity of hearing to the

appellant, cannot be sustained.

We may, at this stage, refer to the observations of Krishna Iyer, J. in Gujarat Steel Tubes Ltd. V. Mazdoor Sabha, (1980) 2 SCC 593 : (1980 SCC (L&S) 197) in which the learned judge observed as under:-

"53. Masters and servants cannot be permitted to play hide and seek with the law of dismissals and the plain and proper criteria are not to be misdirected by terminological cover-ups or by appeal to psychic processes but must be grounded on the substantive reason for the order, whether disclosed or undisclosed. The Court will find out from other proceedings or documents connected with the formal order of termination what the true ground for the termination is. If, thus scrutinised, the order has a punitive flavour in cause or consequence, it is dismissal. If it falls short of this test, it cannot be called a punishment. To put it slightly differently, a termination effected because the master is *satisfied of the misconduct* and of the consequent desirability of terminating the service of the delinquent servant, is a dismissal, even if he had the right in law to terminate with an innocent order under the standing order or otherwise. Whether, in such a case the grounds are recorded in a different proceeding from the formal order does not detract from its nature. Nor the fact that, after being *satisfied* of the guilt, the master abandons the inquiry and proceeds to terminate. Given an alleged misconduct and a live nexus between it and the termination of service the conclusion is dismissal, *even if full benefits as on simple termination, are given and non-injurious terminology is used.*" (emphasis supplied)

Applying the above principles, the order in the instant, case, cannot be treated to be a simple order of retrenchment. It was an order passed by way of punishment and, therefore, was an order of dismissal which, having been passed without holding a regular

departmental enquiry, cannot be sustained.”

The principle laid down in the aforementioned judgment squarely applies to the case on hand. As held by the Supreme Court, though the petitioner was appointed on a temporary basis, the respondents cannot terminate his services by casting stigma on him. In **Parshotam Lal Dhingra vs Union of India**^[2] the Supreme Court, while dealing with the issue whether the termination was punitive and if so, whether an employee is entitled to protection of Article 311 (2) of the Constitution of India held as under:

“It is further held that the use of the expression ‘termination’ or ‘discharge’ is not conclusive; that in spite of the use of such innocuous expression, the Court has to apply two tests, namely; a) whether the servant has a right to post, or b) whether he has been visited with civil consequences. If the case satisfies either of the two tests and then it must be held that the servant must be punished and the termination of service must be taken as dismissal or removal of service, reversion to his substantive rank and if the protection under Article 311 is not extended then the termination of service or reduction in the rank must be held to be wrongful and in violation of the constitutional right of the servant”.

Since the Board is created under the provisions of Section 9 of the Wakf Act, 1954 (for short “the Act”), the petitioner is governed by the extant Service Regulations (for short “the Regulations”) framed by the Board with the previous sanction of the State Government, in exercise of its powers conferred by Section 68 of the Act.

Regulation 15 classified the posts under the Board into four classes. All posts carrying the pay scales of attender and contingent paid employees below the rank of L.D.C. are classified as Class IV employees. Regulation 18 specifies probation for employees falling under Classes I to III. Regulation 32 provides for imposition of various penalties, minor and major including the penalties of removal and dismissal from service to be imposed for good and sufficient reasons. Regulation 33 provides for an elaborate procedure for imposing major penalties falling in clauses (v), (vi) and (vii) of regulation 32, namely; reduction to lower grade or post etc, removal from service and dismissal from service. Regulation 34 prohibits imposition of major penalties falling under clauses (i), (ii), (iii) and (iv) of regulation 32 without informing in writing to the employee of the proposal to take action against him and of the allegations on which the action is proposed to be taken and without giving an opportunity to make a representation, if any, to be taken into consideration by the disciplinary authority.

The aforementioned regulations are embodiment of the principles underlying Article 311 (2) of the Constitution of India. Therefore, the said principles equally apply to the employees governed by these regulations.

The contention of the learned Standing Counsel for the respondents that since the petitioner is a temporary employee, no enquiry needed to be held is liable to be rejected not only on the ground that it is contrary to the judgment of the Apex Court in **Nar Singh Pal (1 supra)**, but also this is in the teeth of the service

regulations.

Regulation 2 (d) of the Regulations defines 'employee' as any person in the employment of the Board and includes Imams, Muazzans, Caretaker and Khadims. Regulation 15 (4) categorized **all posts carrying the pay scales of Attender and contingent paid employees below the rank of L.D.C. shall be classified as Class IV.** Therefore, under the regulations not only the employees carrying pay scales, but even the contingent employees are included in class IV category of the employees of the Board. The order of appointment shows that the petitioner was appointed as Attender on temporary basis with the minimum scale plus D.A. and undoubtedly, he falls within the category of Class IV employees, who are squarely covered by the regulations.

Since admittedly the respondents failed to follow the procedure prescribed in regulation 33 of the Regulations, the impugned order is liable to set aside and the same is in violation of regulation 34 which, as already noted hereinabove, bars imposition of any of the major penalties on its employees without following the procedure prescribed under the regulations.

On the premise aforesaid, the writ petition is allowed. The impugned order is quashed and the petitioner is entitled to reinstatement. No costs.

As a sequel to disposal of the writ petition, WPMP.No. 21039 of 1997 filed by the petitioner for interim relief is dismissed as infructuous.

C.V. NAGARJUNA REDDY, J

Date: 14.08.2007.
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[\[1\]](#) (2000) 3 SCC 588
[\[2\]](#) AIR 1958 SC 36